

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUMBERTO HORIOL MEDINA
VILLARREAL, CHARLES JOSHUA
PETTY, and SHAWN JAMES MILLER,

Defendant.

CR –20–24–BU–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto's Findings and Recommendation Concerning Plea. (Doc. 65.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Mr. Miller is charged with one count of conspiracy to possess with the intent to distribute controlled substances, in violation of 21 U.S.C. § 846 (Count I), one count of possession with intent to distribute controlled substances, in violation of

21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count II), and one count of prohibited person in possession of firearms, in violation of 18 U.S.C. § 922(g)(1) (Count III). (Doc. 1.) The Indictment also contains a forfeiture allegation. (*Id.*)

Judge DeSoto recommends that this Court accept Mr. Miller's guilty plea as to Counts II and III of the Indictment after he appeared before her pursuant to Federal Rule of Criminal Procedure 11, and entered a guilty plea as to one count of possession with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 and one count of prohibited person in possession of firearms, in violation of 18 U.S.C. § 922(g)(1). (Doc. 65.) The Court finds no clear error in Judge DeSoto's Findings and Recommendation. As is the Court's practice, any decision regarding acceptance of the plea agreement will be deferred until sentencing. Additionally, the Court will await a motion from the United States outlining the specific property sought to be forfeited before entering a preliminary order of forfeiture.

Accordingly, IT IS ORDERED that Mr. Miller's motion to change plea (Doc. 58) is GRANTED.

IT IS FURTHER ORDERED that Mr. Miller is adjudged guilty as charged in Counts II–III of the Indictment.

DATED this 5th day of March, 2021.

